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No. 87-755

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

ARCWEL CORPORATION,
Petitioner

versus

SOUTHWEST MARINE, INC., and
SAN DIEGO UNIFIED PORT DISTRICT,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEAL FOR THE
NINTH CIRCUIT

RESPONDENTS BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Southwest Marine, Inc., and San Diego Unified Port District respectfully pray that the petition for writ of certiorari of petitioner Arcwel Corporation be denied for the reasons set forth below.

STATEMENT OF THE CASE

NATURE OF THE CASE:

This case arises out of the use of a dry dock located in San Diego Harbor ("the dry dock") for the overhaul of a United States Navy vessel. The petitioner, Arcwel Corporation, was the company conducting the overhaul under a contract with the Navy. The federal government had leased the dry dock to respondent San Diego Unified Port District in order that the Port District might administer its operation and, thus, possibly make it more available for use by nongovernmental entities. The Port District contracted with respondent Southwest Marine, Inc., to act as the operator of the dry dock. However, petitioner directly contracted with the Port District for the use of the dry dock for the ship overhaul. In this action

petitioner seeks money damages allegedly flowing from delays and disruptions during the performance of its ship overhaul contract caused by the poor mechanical condition of two large gantry cranes located at the dry dock. While denying the essential elements of petitioner's claim, the Port District and Southwest also rely on petitioner's contract promise to hold them harmless from such losses.

PROCEDURAL HISTORY:

The main action, which has been settled and is not involved in the appeal, was filed against petitioner by Sipco Marine, one of petitioner's subcontractors for the ship repair. (CR 1) Petitioner filed separate third-party complaints against the Port District and against Southwest for "Indemnity, Breach

of Third-Party Beneficiary Contract And Negligence". (CR 16, 30, 31; 26, 34)

After the third-party actions were at issue, the Port District and Southwest filed joint motions for summary judgment on December 20, 1983. (CR 42) Upon hearing the motions, the Hon. Leland C. Nielsen entered separate orders in each third-party action on February 3, 1984. In the action against the Port District, the court granted the motion as to all claims. (CR 46) In the action against Southwest, the court granted the motion as to count two (third-party beneficiary's action for breach of contract) and count three (action for indemnity related to main action against petitioner); the motion was denied as to count one (negligence action for damages caused by condition of dry dock). (CR 48)

Petitioner followed with separate motions to revise the court's orders on the motions for summary judgment (CR 49-54); both motions were denied. (CR 62, 63)

After petitioner and Southwest filed a consent to proceed before a United States Magistrate (CR 145), Judge Nielsen ordered the severance of petitioner's third-party action against Southwest and the conduct of all further proceedings therein before a magistrate. (CR 147)

The trial of the third-party action against Southwest came on for trial before Magistrate Edward Infante, sitting without a jury, on April 15, 1985. After eight trial days, the court took the matter under submission. Approximately one year later, on April 15, 1986, the magistrate filed his findings of fact and conclusions of law. (CR 161) A judgment

that petitioner recover $464,705.48 and costs against Southwest was entered on April 17, 1986. (CR 162)

Meanwhile, in the main action, to which the unsevered third-party action against the Port District remained attached, on January 31, 1985, Magistrate Harry R. McCue found the terms of a settlement between Sipco Marine and petitioner to be reasonable and in good faith. (CR 148) Judge Nielsen then ordered that the "portion of the case retained by Judge Nielsen" was settled and continued the matter to May 6, 1985, for filing the settlement. (CR 149) On that date, the matter was continued again to January 13, 1986. No further proceedings to terminate the portion of the case retained by Judge Nielsen were taken until the filing of the "Stipulation For Entry Of Dismissal Of

Complaint And For Entry Of Judgment In Third Party Action Against Third Party Defendant San Diego Unified Port District; Order Thereon" on October 22, 1986. (CR 185) The entry of judgment in the third party action against the Port District was also accomplished on October 26, 1986. (CR 186)

FACTUAL HISTORY:

Petitioner Arcwel and respondent Southwest are corporations engaged in the ship repair business in San Diego. The United States Navy solicited bids for the overhaul of the U.S.S. Dubuque, and both companies, as well as others, submitted bids. On July 8, 1982, the Navy awarded the contract to petitioner at the fixed price of $8,169,868. (Findings 1-3)[1] One

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1. The trial court's individual Findings of Fact (CR 161, pp. 3-7) will be cited as "Finding __"; the trial court's Conclusions of Law (CR 161, pp. 9-13) will be cited as

of the Navy's contract requirements, which petitioner took into account in making its bid, was the requirement that out-of-the-water repairs required during the overhaul be performed in a dry dock known as the Naval Station Graving Dock, San Diego, California. (Finding 5) Petitioner had used the dry dock in June 1982 for another Navy overhaul and was familiar with the available facilities, including gantry cranes, when it entered into the contract for the overhaul of the Dubuque. (RT 57-58, 70-71)

The dry dock is owned by the United States Government and is a physical part of the United States Naval Station, San Diego. (Stip. 9) The dry dock is located at water's edge on the North shore of San Diego Harbor and is

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"Conc. of Law __"; the parties' stipulations of fact in the Amended Pretrial Order (CR 151, pp. 3-7) will be cited as "Stip. __".

completely surrounded by the Naval Station facilities. In 1976, the government leased the dry dock to the Port District. (Finding 6; Ex. B:1)[2] There were two large gantry cranes[3] located on rails along the upper rim of the dry dock basin; however, the description of the "leased property", as set forth in Exhibit A to the lease (Ex. B:1, Art. 1, p.2), listed only a "Gantry Crane No. 4, 25 tons capacity".[4] This

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2. The lease recites on page 1 that, while the dry dock was not excess to the needs of the Department of the Navy, it was not "for the time being, required for public use" and, therefore, the Secretary of the Navy determined it was in the public interest to lease the facility.

3. A gantry crane is one installed on a platform supported by a tower or side frames running on parallel tracks. Cf., Webster's New Collegiate Dictionery (1977) p. 473.

4. The gantry crane listed in the lease was known variously as the "Meyerstein", the "No. 4" and the 25-ton crane. Similarly, the other

was the only reference to any crane in the lease's description of the leased property. (Ex. B:1, p. 25)[5] The parties stipulated that only the No. 4 gantry crane was specifically included in the lease. (Stip. 14)

The lease included the following "disclaimer of warranty":

> The Leased Property is leased to the Lessee on an "as is, where is" basis without warranty of any kind, express or implied. Lessee acknowledges that the Government has made no agreement or promises to alter, improve, adapt or repair the Leased Property

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gantry crane at the dry dock was known as the "Wellman", the "No. 8" and the 30-ton crane.

5. Although the trial court based its damage computations on the failure of Southwest to maintain both gantry cranes, it inconsistently recognized that the leased facilities, the use of which petitioner gained under its User's Agreement with the Navy, included only the No. 4 crane. (Finding 14)

> or any part thereof during the term hereof.

Ex. B:1, Art. 8, p.9.

In addition, the lease required the Port District to indemnify the government against claims arising out of the Port District's use or possession of the dry dock. (Ex. B:1, Art. 7, p. 9)

The Port District, in turn, entered into an "Operation and Maintenance Agreement" with Southwest[6] in which the company agreed to:

> . . . operate and manage the Dry Dock in a manner following the practices and standards of care normally employed in the operation of similar docks and in accordance with the operating manual of said Dry Dock issued by the Department of the Navy, and as directed by the Government and [Port]

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6. Hereinafter referred to as "Operations Agreement".

> District. [Emphasis added.]

Ex. B:3, Art. 3, p. 3; Finding 7.

The words "Dry Dock" were defined in the Operations Agreement as the "ship repair facilities covered by the Lease" [Emphasis added]. (Ex. B:3, Art. 1(b)) In a related provision, the agreement provided: "The Lease covers a graving dock and caisson, . . ., a twenty-five (25) ton capacity gantry crane . . . ." [Emphasis added.] (Ex. B:3, Art. 1(a))

Any discretion Southwest might have had to make the dry dock available to companies wishing to use it was strictly circumscribed. The Operations Agreement provided:

> Dry Dock Operator [Southwest] shall make the Dry Dock available to Users in accordance with the District's charges and requirements as set forth in its then current Dry Dock Tariff and the utility charges levied by

> the Government, provided, however, that in all such use, the Government . . . shall determine priority of all such work and control scheduling of use of the Dry Dock consistent with the needs of the Navy's fleet. The Dry Dock shall be operated by Dry Dock Operator in accordance with Article 3 of the Lease. [Emphasis added.]

Ex. B:3, Art. 3, p. 4; see also, Stips. 17 and 19.

The word "Users" was defined in the agreement as: "those companies in the ship repair business which are authorized by the Government and District to use the Dry Dock for shipbuilding, ship repair and ship conversion work." (Ex. B:3, Art. 1(e))

The Operations Agreement also included provisions, similar to those in the Port District's lease, requiring Southwest to indemnify the Port District against claims arising from the operation

of, or any defect in, the dry dock and providing that: "The Dry Dock is made available to Dry Dock Operator and Users on an 'as is, where is' basis without warranty of any kind, express or implied." [Emphasis added.] (Ex. B:3, Arts. 7-8, pp. 9-10)

Pursuant to the procedures established by the lease and the Operations Agreement, petitioner entered into a "User's Agreement" with the Port District for the use of the dry dock during the overhaul of the Dubuque. (Ex. B:15) Included in the User's Agreement was petitioner's agreement that the contract was subject to the terms and conditions of the lease (Id., Art. 20, p. 9) and that petitioner would comply with the terms of the lease. (Id., Art. 6, p. 4-5)

More important, the User's Agreement also incorporated by reference an attached "Dry Dock Tariff". (Id., Art. 1, p.2) The tariff described the dry dock in terms closely similar to those used in the lease and the Operations Agreement.

In stating the terms and conditions of use, the tariff provided:

> 6.2 Disclaimer of Warranty
> Users should understand that the Dry Dock is made available on an "as is, where is" basis without warranty of any kind either expressed or implied. A User using the Dry Dock should make an independent inspection and may not rely upon any representation concerning the condition or state of repair of the Dry Dock or any part hereof including any promise to improve, alter, adopt [sic] or repair the Dry Dock or any part thereof unless such representation is made in writing by the District. [Emphasis added.]

In addition, petitioner promised to indemnify and hold the government, the Port District and Southwest harmless from

claims arising from petitioner's use of the dry dock. (Id., Art. 6.3, pp. 19-20) More specifically, petitioner agreed:

> . . . to release and hold the District, the Government, the Dry Dock Operator [Southwest] . . . harmless from any cost or loss <u>including loss of profit arising from disruption to or delay in User's contract work</u> due to acts or omissions (including negligence) of [such parties] . . . in the operation of the Dry Dock so long as such parties have acted in good faith. [Emphasis added.]

Id., Art. 6.3, pp. 20-21.

Under petitioner's contract with the Navy, the Dubuque was initially to enter the dry dock on October 12, 1982. (Amended Pretrial Order, CR 151, Stip. 33) However, the Navy unexpectedly exercised its prerogative to move the beginning of the dry-docking up to October 5, 1982. Southwest's first notice of this was on September 30, 1982.

(Stip. 28) This appreciably reduced the amount of time which had previously been expected to elapse between the undocking of the previous ship in the dry dock and the docking of the USS Dubuque. (CR 161, Facts Not Contested, No. 1, pp. 7-8)

It was during this shortened period, that Southwest was called on to conduct required repairs, maintenance and cleaning of the dry dock. Despite the unanticipated acceleration of the schedule, Southwest was able to have the dry dock in operable condition on October 5, 1982, when the USS Dubuque came into the dry dock. (Stip. 7)[7] Prior to the docking of the vessel, Navy representatives inspected the dry dock

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7. In stipulation No. 7 of the Amended Pretrial Order the parties stipulated that the dry-docking started on October 4, 1986; this was an inconsequential typographical error.

and approved its condition for flooding and use for the overhaul of the Dubuque. (CR 151, Facts Not Contested No. 2, p. 8) Prior to the docking of the vessel, petitioner's project manager for the overhaul of the Dubuque inspected the dry dock and accepted it for use. (RT 399-400) The vessel left the dry dock on December 5, 1982, after the dry dock phase of the repair work was completed.

At the time of the inspection and acceptance of the dry dock by petitioner's project manager, he was aware that the dry dock gantry cranes were temporarily unavailable for use. (RT 322) The gantry crane which was part of the leased premises, crane No. 4, was made available for use during the last half of the dry dock period.[8] The other

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8. The dry dock period extended from October 5 through December 5, 1982. (Stip. 7) Crane No. 4 became

crane, crane No. 8, was made available one week after the vessel entered the dry dock; however, its utility was limited by its poor mechanical condition. (Finding 18)

The Southwest employee who acted as the Dockmaster testified that the dry dock gantry cranes were approximately 40 years old and required continual repair efforts to keep them as operational as possible. (Deposition of Raymand Claire Alderman, May 29, 1984, p.12-15)[9] The maintenance efforts of the Dockmaster's crew were recorded in daily maintenance logs. (Ex. A:7) Monthly written maintenance reports were made by Southwest to the Port District; these

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available on November 6th. (Finding 17)

9. Admitted into evidence pursuant to stipulation of counsel. (RT 428-430)

included reports of work performed on the gantry cranes. (Exs. A:10, A:30, B:26)

Despite the documented efforts of Southwest to maintain the cranes, the trial court found that Southwest had not complied with its obligations to maintain the gantry cranes under the Operations Agreement between Southwest and the Port District. (Findings 15, 19)

SUMMARY OF ARGUMENT

The Court of Appeal was correct in ruling that the exculpatory provisions in the contract signed by petitioner to obtain the use of the Navy dry dock for petitioner's commercial use were valid and enforceable under both federal maritime law and the law of the state of California.

ARGUMENT

1. THERE IS NO CONFLICT BETWEEN CALIFORNIA LAW AND FEDERAL MARITIME LAW GOVERNING THE ENFORCEABILITY OF EXCULPATORY CLAUSES IN CONTRACTS WHICH DO NOT AFFECT THE PUBLIC INTEREST.

The Court of Appeals decided that the result in this case was the same under either federal maritime law or California law and, therefore, felt no need to choose between the two. Petitioner now argues that this was error; that the case involves an unresolved conflict between the applicable rules in each body of law; and that the California rule set forth in Tunkl v. Regents of the University of California (1963) 60 Cal.2d 92 should be applied to invalidate the exculpatory clauses enforced by the Court of Appeals.

Initially, it should be noted that petitioner's supporting argument includes a not uncommon confusion of maritime law with admiralty jurisdiction. In support of its argument that maritime law does not govern the interpretation of the exculpatory clauses in this case Petitioner discusses at some length the well-known case of Executive Jet Aviation v. Cleveland (1972) 409 U.S. 249. Executive Jet, however, is the preeminent decision on the question of when admiralty jurisdiction attaches and not authority on the question of when maritime law applies. As this court recognized in Kermarec v. Compagnie Generale Transatlantique (1959) 358 U.S. 625, 628, the exercise of admiralty jurisdiction and the application of maritime law do not always go hand-in-hand. As was done in this case, maritime

law may be applied in cases heard by a court exercising diversity jurisdiction.

It also appears that petitioner's confusion carries over into its understanding of the transactions giving rise to this litigation. At page 18 of its petition petitioner states: "Clearly Arcwel's contract with the Navy is subject to maritime law, but its agreement with Southwest does not involve a 'traditional maritime activity,' . . . ." While respondents agree with the first clause of the sentence, they cannot agree with the second because, among other reasons, petitioner had no contract with Southwest relative to the drydocking of the Dubuque. Petitioner's Users Agreement for the use of the dry dock was with the Port District, not with Southwest. (Ex. B:15) The exculpatory clauses with which we are concerned were

in the User's Agreement and in the incorporated Port District tariff. It would be difficult indeed to contemplate a more "traditional marine activity" than petitioner's use of a dry dock for the repair of a sea-going vessel.[10]

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10. It has been long-settled that contracts sufficiently related to the use of ships to make the contracts subject to maritime law include those dealing with the construction, use and operation of dry docks. The Vidal Sala (D.C. Ga. 1882) 12 F. 207; The Robert W. Parsons (1903) 191 U.S. 17; The Steamship Jefferson (1909) 215 U.S. 130; The Atlanta (S.D. Ga. 1948) 82 F.Supp. 218; In re Queen Ltd. (E.D. Pa. 1973) 361 F.Supp. 598; The Alliance (N.D. Cal. 1916) 236 F. 361; Newport News Shipbuilding & Dry Dock Co. v. O'Hearne (4th Cir. 1951) 192 F.2d 968; Brown & Root, Inc., v. Joyner (4th Cir. 1979) 607 F.2d 1087, 1089 ["[A] dry dock is peculiarly a maritime facility."] More specifically, contracts for the use (The Vidal Sala, The Robert W. Parsons, The Atlanta), the construction (Brown & Root) and the repair (Newport News) of dry docks have been held to be matters governed by maritime law.

A. The Decision Of The Court Of Appeals Is Supported By California Law.

Petitioner argues that the decision of the Court of Appeals conflicts with the case of Tunkl v. Regents of the University of California (1963) 60 Cal.2d 92. (Petition For Writ Of Certiorari, pp. 20 et seq.) However, the Court of Appeals considered Tunkl and, in fact, relied on it to reach its decision. A brief review of the case reveals why.

First, Tunkl dealt with the critical situation of a seriously ill person seeking medical care and being required to sign a medical release form as a condition of treatment. The court relied heavily on a determination that the contract involved a matter of serious public interest. The court, on the other hand, noted: "[O]bviously no public

policy opposes private, voluntary transactions in which one party, for a consideration, agrees to shoulder a risk which the law would otherwise have placed upon the other party . . . ." (Id.) Petitioner company was certainly not in a situation involving a matter of important public interest similar to that in Tunkl when it entered into the User's Agreement with the Port District for the commercial use of the dry dock with its associated equipment.

Second, all of the damage claimed by petitioner allegedly flowed from the condition of the gantry cranes. The evidence that all of the overhaul work in the dry dock could have been performed by other means, that is, mobile cranes, is uncontradicted. In effect, use of the gantry cranes by petitioner was not a necessity but a practical and economic

convenience. Requiring petitioner to inspect the gantry cranes and to decide whether to use them under the terms of the hold harmless provisions of the dry dock tariff, or, instead, to arrange the use of rental mobile cranes, is hardly the extraction of an unconscionable contractual advantage such as involved in Tunkl.

Third, it is clear that the Port District did not have a "monopoly" over the dry dock. Its use was strictly controlled by the Navy, and only government-approved contractors could use it. The fees charged by the Port District were no more than those charged by the government as lease rental. (Exs. B:1, Supp. Agmt. P00002, pp. 1-2; B:15, Dry Dock Tariff, p. 9)

Under the circumstances, it is difficult to comprehend how it could be

thought to be unconscionable for the Port District to ask users such as petitioner to be responsible for their own losses flowing from their use, for their own convenience, of dry dock equipment, such as the gantry cranes.

Petitioner relies on the decision in Pelletier v. Alameda Yacht Harbor (1986) 185 Cal. App. 3d 1553, 230 Cal. Rptr. 253 as being indicative of California law on this question. In Pelletier an intermediate appellate court, in a rather cursory and aberrant application of Tunkl, held that an exculpatory clause in a dock lease could not be relied upon by the dock operator for protection against liability for negligently exposing a yacht at the facility to damage. However, neither the Pelletier court nor petitioner in its petition took note of the recent decision of the California

Supreme Court which strongly supports decision of the Court of Appeals in this action.

In Fahey v. Gledhill (1983) 33 Cal. 3d 884, 191 Cal. Rptr. 639, the court dealt with the effect of an exculpatory clause in a work order for the haulout, repair and maintenance of a 50-foot power yacht.[11] The court initially considered whether federal or state law should be applied. The court stated:

> [A]dmiralty courts have in numerous cases considered the validity and effect to be given to exculpatory clauses like that before us. Nor does it appear that California's policy against agreements exonerating a party for his own negligence is so overwhelming as to compel disregard of admiralty

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11. Such work, of course, directly corresponds to the drydocking, maintenance and repair of the Navy ship in this action.

> law. Our law recognizes the validity of such agreements in some circumstances. (See Tunkl . . .)
>
> It must be concluded that admiralty law in general governs the validity and interpretation of ship repair contracts, including exculpatory clauses. (Emphasis added.)

Fahey v. Gledhill, 191 Cal. Rptr. at 642.

Thus, the California Supreme Court itself has recognized that the state's laws and policies are not contravened by enforcement of a exculpatory clauses in maritime contracts.

B. The Decision Of The Court Of Appeals Is Supported By Federal Maritime Law.

Petitioner also argues that the decision of the Court of Appeals conflicts with the prior decision of this court in Bisso v. Inland Waterways Corp. (1955) 349 U.S. 85, 75 S.Ct. 629, 99

L.Ed. 911. Again, petitioner is being very selective in its citation of authority. Bisso was a case involving an exculpatory clause in a contract for the towing of an oil barge. The court held the clause was contrary to public policy.

This court later held, in a case dealing with an exculpatory clause in a tariff filed with the Interstate Commerce Commission, that such clauses are not automatically invalid in all towage situations. S.W. Sugar Co. v. River Terminals (1959) 360 U.S. 411, 79 S.Ct. 1210, 3 L.Ed. 2d 1334. The court noted that there was no general congressional policy requiring water carriers to be liable for their negligence in all cases.

And, as noted by the court in Fahey, numerous cases have subsequently limited the application of the holding in Bisso to towage cases:

> The reasoning of Bisso is tied to the history of the towing cases, the nature of the towing business and the public service concept. . . . [I]t has been stated that the Bisso rule is limited to towage cases and that the policy expressed is inapplicable to other situations when there is equal bargaining power. Federal cases have subsequently enforced agreements releasing negligence liability in admiralty cases, not involving towage. [Citations]
>
> . . .
>
> The rationale for permitting a party to disclaim responsibility for his own negligence is that parties to an agreement having substantially equal bargaining power may bargain over which is to bear the risk of loss and set the price accordingly, thus achieving a more rational distribution of the risk than the law would otherwise allow. "The rationale presupposes that the contracting parties have in fact considered the relative

> costs of insuring against negligent design and manufacture and have incorporated their conclusions into the contract." [Citation]

Fahey v. Gledhill, 191 Cal. Rptr. at 645-46.

This is exactly the rationale relied on by the Court of Appeal in this case.

> The commercial context presented by this case raises equities far different from those of the helpless patient entering the hospital in Tunkl. Arcwel admits that, when it submitted its bid to the Navy, it was aware that it would be [sic] have to sign the User's Agreement and was familiar with the terms. Therefore, it had an opportunity to make its bargain based on the entire package offered by the Navy, including the allocation of various risks associated with the project. . . . We find the public interest not seriously implicated by this provision.

Arcwel v. Southwest Marine, Inc., (9th Cir. 1987) 816 F.2d 468, 471.

The Court of Appeals pointed out that, in fact, the public interest contravenes petitioner's position.

> All bidders submitted their proposals based on the terms set forth in the bid documents. To allow the successful bidder [Arcwel] to change a key term [an exculpatory clause] retroactively would be unfair to the other bidders; such post-hoc renegotiation of the contract's terms could also seriously undermine the government's procurement process.

Id. at 7 n. 2.

2. THE DECISION DOES NOT CONFLICT WITH GOVERNMENT PROCUREMENT POLICIES.

It is difficult to completely comprehend petitioner's argument regarding government procurement policies. Apparently petitioner argues that because Southwest was both the operator of the dry dock and one of petitioner's competing bidders on the

Dubuque contract it had an unfair advantage in the bidding process. Petitioner follows with the conclusion that it may avoid the application of the exculpatory clauses in the User's Agreement it signed with the Port District. This appears to be a paradigmatic non sequitur. However it may be classified, the argument goes nowhere. If Southwest had a competitive advantage, it obviously bore no fruit. Petitioner was awarded the bid.

It must also be kept in mind that this is not an action for unfair competition. It is an action against Southwest allegedly arising from its activities as the dry dock operator and not its activities as a ship repair competitor of petitioner. It is an action for the negligent operation of the drydock, that is, for the negligent

maintenance of the dry dock's gantry cranes. That Southwest may or may not have engaged in unfair competitive practices as a ship repair company has no relevance to the question of whether petitioner, in its agreement with the Port District, effectively waived the right to pursue either Southwest or the Port District for any damages that might have flowed from any negligence on the part of Southwest.

CONCLUSION

The interpretation by the Court of Appeals of the exculpatory language in the User's Agreement between the Port District and petitioner is fully supported by maritime case authority in both federal and California courts.

Respondents Southwest Marine, Inc., and San Diego Unified Port District respectfully request the denial of the petition for writ of certiorari.

C. Douglas Alford,
member of the firm of
Alford & MacLeod, Attorney
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Unified Port District and
Southwest Marine, Inc.